

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of a class of
similarly situated individuals,

Plaintiffs,

v.

COMSCORE, INC., a Delaware corporation,

Defendant.

Case No. 1:11-cv-5807

Hon. James F. Holderman

Magistrate Judge Young B. Kim

**PLAINTIFFS' MOTION FOR LEAVE
TO FILE AN ENLARGED BRIEF *INSTANTER***

Plaintiffs Mike Harris and Jeff Dunstan, individually and on behalf of the Class and Subclass (collectively “Plaintiffs”), respectfully move the Court pursuant to Local Rule 7.1 for an order allowing them leave to file *instanter* an enlarged memorandum of law in support of their Motion for Partial Summary Judgment. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs have filed a Motion for Partial Summary Judgment (Dkt. 321), seeking judgment in their favor on the authorization elements and consent defenses to their claims brought under the Stored Communications Act, 18 U.S.C. §§ 2701, *et seq.* (“SCA”); the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510–22 (“ECPA”); and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (“CFAA”).

2. Through the course of both class and merits discovery in this case, Defendant comScore, Inc. (“comScore”) has produced tens of thousands of highly technical documents (including source code for its tracking software, OSSProxy), the Parties have engaged in expert discovery on several key issues, and Plaintiffs have conducted over a dozen depositions of both

comScore and comScore's employees (most of which, of course, also centered upon comScore's document production), among other investigations into the merits of their claims.

3. While Plaintiffs have endeavored to keep their briefing as succinct as possible, due to the technical nature of their claims and the voluminous discovery that has taken place, Plaintiffs require an additional six pages for their Memorandum of Law in support of their Motion for Partial Summary Judgment, so that they may fully explain both the facts and the law pertaining to the authorization elements and consent defense to their claims.

4. As noted in Plaintiffs' Memorandum of Law, the undisputed issues of fact in this case show that the central issues of authorization and consent can be decided in Plaintiffs' favor without the need for time-consuming and expensive expert discovery. Accordingly, permitting full briefing on these issues now will, if Plaintiffs' motion is successful, preserve the Court's and the Parties' resources by significantly narrowing the issues for expert testimony and discovery, future summary judgment briefing, and trial.

5. Plaintiffs' proposed 21-page Memorandum of Law is filed at Dkt. 323 (redacted version) and Dkt. 324 (provisionally sealed version). In accordance with Local Rule 7.1, a Table of Contents and Table of Authorities are included in the Memorandum of Law. Should the Court deny this Motion, Plaintiffs will withdraw that Memorandum from the docket, and attempt to file a shorter brief.

6. On February 20, 2014, Plaintiffs' counsel emailed comScore's attorneys to ask whether comScore would stipulate to Plaintiffs' submission of a brief in excess of 15 pages. In response, comScore indicated that it takes no position on the instant request.

WHEREFORE, Plaintiffs Mike Harris and Jeff Dunstan respectfully request that this Court enter an order granting this motion and permitting the filing of their 21-page Memorandum

of Law in Support of their Motion for Partial Summary Judgment, currently filed at Dkt. 323 (redacted version) and Dkt. 324 (provisionally sealed version), and awarding such other and further relief as it deems equitable and just.

Dated: February 21, 2014

Respectfully submitted,

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of all others similarly
situated,

By: s/ Rafe S. Balabanian
One of Plaintiffs' Attorneys

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Attorneys for Plaintiffs, the Class, and the Subclass

CERTIFICATE OF SERVICE

I, Rafey S. Balabanian, an attorney, hereby certify that on February 21, 2014, I served the above and foregoing ***Plaintiffs' Motion for Leave to File an Enlarged Brief Instanter*** by causing true and accurate copies of such paper to be transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

s/ Rafey S. Balabanian
